

tion and not creating some special right called privacy out of the emanations and the penumbras.

Thank you, Mr. Chairman. I'll yield back.

Mr. CHABOT. Thank you. The gentleman's time has expired.

I would just note, in following up on what the gentleman just indicated, that relative to the Partial Birth Abortion Ban Act, which is being taken up by the Supreme Court now and will be argued sometime in the near future, the gentleman mentioned that the Congress made the determination that partial-birth abortion is never medically necessary, and that's true, and I just would note that that was based upon not just something that we came up with out of thin air. It was based upon people that were in those very seats right there who testified before this Committee at numerous hearings which took place over the years, and these were medical doctors, people that were eminently qualified to testify, and the Congress based that decision upon their testimony. And there were folks, obviously, on both sides.

At this point I would just note that, without objection, all Members will have 5 legislative days to submit additional materials for the hearing record.

The gentleman from Virginia has joined us, so would the gentleman like to make an opening statement?

Mr. SCOTT. Sure.

Mr. CHABOT. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I just wanted to make a couple of comments—first, on the last, on what's true or what's not true. It's true that we did have some testimony that the procedure that you referred to is never medically necessary. We also had testimony from organizations representing the majority of the OB/GYNs in the Nation who testified just the opposite, that it, in fact, can be necessary to protect the health of the mother. And you can't change the facts by declaring a fact. I mean, the record before us clearly indicates that there is significant, if not overwhelming, medical evidence that it is needed to protect the health and life of the mother.

In terms of directing the Supreme Court, we have a separation of powers. We can't direct the Supreme Court by findings. We can direct the Supreme Court with a constitutional amendment that the Court doesn't have anything to do with. You pass it here and ratify it by the States. But the way we—that's the way we directed the court, but you just can't direct them by having some declaration in the finding sections of a statute.

Mr. Chairman, I have been intrigued by the title of this hearing, the "Scope and Myths of *Roe v. Wade*." I would hope that whatever myths there may be will be dispelled. I don't know if that's going to be the case or not, but we'd just hope that—as it's been suggested, the Supreme Court will have another opportunity to just reverse *Roe v. Wade*, not tinker around with it, just reverse it. One State has recently passed legislation that will clearly give them the opportunity to do that, which will transfer the question from the judicial branch to the political branch, where 50 States will come up with 50 different ideas on the subject. That would turn the clock before the 1970's. Some people, I'd assume, would like that. Others

of us—and I'm included in this group—would not like the clock turned back before the 1970's.

But I look forward to the testimony and yield the balance of my time to the gentleman from New York.

Mr. CHABOT. Thank you

The gentleman from New York is recognized.

Mr. NADLER. I thank the gentleman for yielding. I wanted to make a couple of comments after hearing some of the comments from the gentleman from Iowa, profoundly disagreeing with one of the great Supreme Court decisions of our era, the *Griswold* decision of 1965.

You know, when the Constitution was being drafted, there was no Bill of Rights provided. And when some of the ratification conventions said we really ought to have bills of rights, some of the Founding Fathers said, no, no, we shouldn't have a Bill of Rights, because if you enumerate a right to free speech and a right to this and a right to that, some people will construe the fact that you forgot to mention this other right as meaning you don't have it. And no matter how thorough you think you're writing it, you're not going to delineate every right. That's why they put the ninth amendment in.

The ninth amendment in the Bill of Rights says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." So in other words, the ones that are mentioned are not the only rights.

Now, the fourth amendment says, "The right of the people to be secure in their persons, houses, papers, and effects," *et cetera, et cetera*, "shall not be violated . . ." And you put that together with the ninth amendment, and the right to privacy is perfectly obvious. And I don't think it was a great reach for the Court to say that one of the rights that we did not surrender by enacting the Bill of Rights was the right to privacy.

Now, some people may disagree, but that's why they put the ninth amendment in the Constitution, so that nobody should argue it's not there, it's not number six, it's not number eight, where is it? And the Court has to define where it is and what it is, and I think it was a perfectly reasonable—people can disagree, but it was a perfectly reasonable interpretation to say that privacy is a fundamental right and that's what the fourth amendment is getting at. If you're not concerned with privacy, why are you concerned about the right of the people to be secure in their persons, houses, papers, and effects, but not their bodies? Well, you didn't have that technology in those days, so we didn't worry about it. But now that we have other technology, you have other medical advances, people's bodies probably ought to be as secure as their persons and houses and papers and effects.

So it's a question of more modern modernity and adapting the same words to unforeseen circumstances, and it was a very reasonable decision, *Griswold* was, and *Roe* is a reasonable outgrowth of *Griswold*.

Now, the gentleman says, When does human life start? That's the key question. Or he says, Is a human life sacred? Well, I think we all agree that human life is sacred. Then he says, When does it start? That is indeed the key question. Does a human life start

as a clump of cells at conception only? Well, some religions take that point of view——

Mr. CHABOT. The gentleman's time has expired. Would he like an additional few minutes?

Mr. NADLER. I would indeed. Three. I don't think I'll go——

Mr. CHABOT. The gentleman gets an additional 3 minutes?

Mr. NADLER. Thank you.

Maybe conception. Maybe implantation. Maybe when this group of cells begins to have a consciousness or a mind or some nerves. Who knows? *Roe* is very well structured, in my opinion, because it recognizes that a clump of cells has a lot less claim to our moral regard than a somewhat advanced fetus, which has less claim than a more advanced fetus. At some point the status switches. I don't know when, but at some point it switches. I have no moral compunction about a clump of cells or about one cell. Some people disagree. They're entitled to disagree. But it's not so obvious. And it's not so obvious that because——well, most conceived embryos are self-aborted, we never even know about it because they're not implanted. That's nature. Is that murder? Is nature committing mass murder? Is God committing mass murder?

So these are questions that are not so simple, and it's not so obvious to say that 45 million babies were murdered. I certainly don't agree with that.

And, finally, let me say that to say that courts have said that you cannot deny a woman an abortion or a particular procedure if to do so would endanger her life or health. Congress comes along and says, We find, all of us advanced OB/GYNs in Congress, all 435 of us find that partial-birth abortion or procedures described in the bill as partial-birth abortion are never medically necessary.

Well, our finding it doesn't make it true, and the fact is that that's an individual medical judgment for an individual case. Maybe in some cases it is necessary; in some cases it isn't. That's for the doctor to decide, not for Congressmen who've never seen the patient and, frankly, don't know the first thing about medicine, most of us. A couple doctors do, but most of us are not medical experts. And the fact is that it's not up to Congress to say that, and that's what these courts have ruled quite reasonably.

And, finally and lastly, Congress is not the supreme judge. Congress is not the supreme judge of facts. The fact that we say it's now 6 o'clock doesn't make it 6 o'clock. The fact that we say something is never medically necessary doesn't make it true. We may be right; we may be wrong. It's for courts to decide facts. That's why they exist in the context of individual cases and controversies. It's not up to us to usurp the right of courts.

Thank you very much.

Mr. CHABOT. Thank you.

I would just like to, if I can, if the gentleman would yield his 30 seconds to me, so I could——

Mr. NADLER. I will reclaim my unclaimed——my surrendered time, and I will yield it to the gentleman.

Mr. CHABOT. Thank you. I'll be very brief.

I would just make a quick point on the privacy issue. I agree with the gentleman from Iowa about its not being in the Constitution or in the amendments. However, even if it were in there, to

stretch the right of privacy to the point where you can destroy a human child, unborn child, is like saying that one has privacy, therefore, they could commit suicide, therefore, they could take crack cocaine or heroin in their home, or could commit incest in their home in their own privacy.

So I think many believe that even if there was a right to privacy, that it's been stretched beyond recognition to say that you can destroy human life with——

Mr. NADLER. Reclaiming the 10 seconds remaining, I would simply say that the gentleman, the Chairman, points up the essential question, and the real question animating all of this is: Is a clump of cells a human life? If it is not—I believe it is not—when does it become that? That is a different question. If you assume that it's a human life at the moment of conception—and some people do, some religions do—then everything else follows. If you assume not, then you reach different conclusions.

I yield back.

Mr. CHABOT. Thank you. The gentleman's time has expired.

You have probably heard enough from the panel. We'd like to get to the witnesses. So at this point, we'll do that.

I'd like to introduce our very distinguished panel of witnesses here this afternoon. Our first witness today is Ms. Cinny Roy, who happens to be from Cincinnati from the district that I happen to represent. Ms. Roy is the founder and director of the Eve Center, which provides free peer and paraprofessional support for women on a variety of topics, including abuse, depression, eating disorders, suicidal tendencies, childlessness, *et cetera*. She is a professional counselor who is licensed in Ohio. Prior to founding the Eve Center, Ms. Roy served as a specialist in abortion recovery, and we welcome you here this afternoon.

Our next witness will be Ms. Kellyanne Conway. I'll go ahead and do her introduction because we expect her to be here. Ms. Conway is the CEO and president of the polling company, inc., a privately held, woman-owned corporation founded in 1995. Ms. Conway is one of the most quoted and noted pollsters on the national scene. She was recognized as the most accurate predictor of the 2004 elections and received the Washington Post's Crystal Ball Award. Ms. Conway recently co-authored "How American Women Are Quietly Erasing Political, Racial, Class, and Religious Lines to Change the Way We Live"—that's a long title—with Democrat pollster Celinda Lake, and we welcome her here, if she gets here.

Our third witness is Professor Karen O'Connor. Professor O'Connor is the founder and director of the Women in Politics Institute at American University, where she formerly served as the Chair of the Department of Government. Prior to joining the faculty at American University, Professor O'Connor taught at Emory University from 1977 to 1995, holding appointments in the Political Science Department and the law school. Professor O'Connor has written, co-authored, and edited several books, and we welcome you here this afternoon, Professor O'Connor.

Our fourth and final witness is Professor Helen Alvaré. Professor Alvaré is an Associate Professor of Law at Catholic University of America's Columbus School of Law, where she presently teaches property, family law, and a legislation seminar. Prior to joining the

faculty at Columbus School of Law, Professor Alvaré worked at the National Conference on Catholic Bishops, first in the Office of General Counsel, and later as the Director of Information and Planning for the Bishops' Pro-Life Office.

We welcome all our witnesses here this afternoon, and for those who may not have testified before a congressional Committee before, let me very briefly explain our lighting system. There are two on the table there. We have what's called the 5-minute rule, which is we all had 5 minutes, although we did stretch it a little bit by yielding an additional 2 minutes here and 3 minutes there, as the Chair saw fit. But the lights will be green for 4 minutes. The yellow light will let you know you got a minute to try to wrap up. When the red light comes on, we'd appreciate your wrapping up as closely to that as you can. We'll let you go a little bit beyond that if it's necessary, but if you could stay within that, we would appreciate it very much.

Then, finally, it's the practice of this Committee to swear in all witnesses appearing before it, so if you wouldn't mind standing and raising your right hands.

[Witnesses sworn.]

Mr. CHABOT. Again, we welcome you here this afternoon, and I believe our first witness—let's see. Ms. Roy, you are recognized for 5 minutes. And if you could turn that mike on, it should be working there. Thank you very much. We'll wait to start your time until you start.

**TESTIMONY OF CINNY ROY, FOUNDER AND DIRECTOR,
EVE CENTER**

Ms. ROY. Thank you, Mr. Chabot.

Beginning in 1997, I worked exclusively with women and became a specialist in abortion recovery. Recognizing that when a woman seeks help, it is often more complicated than a single issue, I returned to university in 2000 and received a master's degree in counseling.

In 2003, I founded the Eve Center, which provides free support to women by women seeking to recovery their mental, emotional, and spiritual health. And if you will note on page 2 and 3, I've listed over 20 different topics of which we are involved.

Because the Eve Center provides a safe, confidential environment exclusively for women, the response has been good. Since we aren't a single-issue organization, when a woman comes in, no one knows what concerns she brings. We provide anonymity. Because we have the highest standards of confidentiality and because of the broad menu of presenting problems, she experiences respect and protection during her sessions.

I had moved away from abortion recovery work, but found that working in women's issues I can't get away from it. Even if it isn't her primary presenting problem, there is a significant percentage of intakes with abortion checked as a concern. And I'd just ask that you note my Attachment A, which notes that 23.3 percent of our clients in an 18-month period identified abortion as a cause for concern.